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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/657,357	09/07/2000	Kenneth P. Weiss	W0537/7005	1625
37462	7590	10/19/2006	EXAMINER	
LOWRIE, LANDO & ANASTASI RIVERFRONT OFFICE ONE MAIN STREET, ELEVENTH FLOOR CAMBRIDGE, MA 02142			FLANDERS, ANDREW C	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/657,357	WEISS, KENNETH P.
	Examiner	Art Unit
	Andrew C. Flanders	2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 September 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18,23,28-30 and 36-40 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6-18,23,28-30 and 36-40 is/are rejected.
- 7) Claim(s) 5 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 July 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 05 September 2006 have been fully considered but they are not persuasive.

Applicant alleges:

"First, contrary to the assertions in the Office Action, there is no proper motivation present in the references to lead one of ordinary skill in the art to make the proposed combination. The motivation to make this combination of references comes from Applicant's disclosure and is thus based on improper hindsight. There is no motivation to combine the references as asserted in the Office Action."

Examiner disagrees. As shown in the previous rejection mailed 03 March 2006, Thompson discloses numerous reasons in col. 1 lines 1 – 67 and col. 2 lines 1 – 51 why one would want the feature of speeding up the playback to catch up with the live program. The main reason is individual choice as to when to start a program; col. 1. Since there are several desirable features mentioned by Thompson about speeding up recorded play back to reach a live broadcast it cannot be considered to be hindsight reasoning.

Applicant further alleges:

"As noted above, Thomason is directed to a device that is clearly identified as being for use in a television or video recorder. Despite the fact that radios were well known at the time of filing of Thompson, Thomason never mentions or suggests in any way that the memory device could be used in a radio. Whereas automatic recorders have been widely used in connection with televisions, such technology traditionally has not

been applied to radios. The law is clear that to sustain a rejection under 35 U.S.C. § 103, there must be a clear teaching, suggestion or motivation present in the prior art of record that would lead of ordinary skill in the art to make the combination and/or modification. In this case, such teaching, suggestion or motivation is wholly lacking in the prior art. The ~ suggestion to provide a radio device with an automatic recorder that "is configured to automatically control the rate at which said RAM is read out to said replay audio input of said device" and "wherein said replay, rate is selected so as to gradually eliminate the delay time without substantially impairing audio quality of the replayed audio," is found in Applicant's own specification. It is only in hindsight, based on Applicant's own specification and claims, that one might think to apply Thomason's disclosure to the device disclosed by Whitby. However, such hindsight-based reasoning is impermissible. The required suggestion or motivation to combine and/or modify references must be clear and recognizable in the prior art itself, without reference to Applicant's specification or claims, and in this case it is not. Accordingly, because there is nothing in the references of record that would lead one of ordinary skill in the art to combine Whitby and Thomason, the combination is improper. Therefore, the rejection should be withdrawn."

Examiner disagrees. While Thompson is directed to television as noted by Applicant, significant portions of the invention are directed to audio. Examiner would like to direct Applicant to col. 2 lines 25 – 27. This portion of the invention accelerates digital audio data, much like the digital audio data of Whitby. It is this portion of the invention that is used to modify Whitby. Further it should be noted that the playback of digital data, whether it be video or audio, is considered to be analogous in the art. Audio is frequently embedded with video and vice versa. Simply removing one of these does not patentably distinguish something from the prior art. Furthermore, radios that receive television signals are notoriously well known, see Fig. 3 of Mankovitz (U.S. Patent 5,703,795). Broadcast receiving devices such as televisions, radios, computers are all notoriously well known to be interchangeable and it is known in the art that any of

these can easily be adapted to accept any type of broadcast signal.. One cannot make that argument that one cannot take a feature of a digital recording system and apply it to another because they accept different input signals.

Applicant further alleges:

Furthermore, even if one were to combine Whitby and Thomason as proposed in the Office Action, the combination fails to disclose or suggest at least one limitation recited in Applicant's claim 1. Claim 1 recites "wherein said replay rate is selected so as to gradually eliminate the delay time...thereby automatically returning said device to normal mode" (emphasis added). This feature is not disclosed or suggested by Whitby and/or Thomason, whether considered alone or in combination. "Normal mode" is defined in Applicant's specification to mean a mode in which incoming audio inputs are applied directly to the audio inputs of the radio. In other words, a mode in which the user is listening to a real-time incoming signal. By contrast, "replay mode" is defined as a mode in which the audio input to the radio is received from the RAM. In other words, the incoming audio has been stored in RAM and is now being played out, while the current incoming audio is inhibited from the radio (either discarded or stored in the RAM to be played out after a time delay). According to Applicant's claim 1, when the delay time is eliminated, the device is automatically from replay mode to normal mode. This is not disclosed by either Whitby or Thompson.

Thomason discloses that a viewer watching a historical program (i.e., watching a program being supplied from the memory) can "catch up" with the live broadcast by accelerating the playback. However, nowhere does Thomason disclose or suggest that once that viewer has "caught up," the device is automatically returned to a mode in which the program is no longer supplied via the memory. Rather, Thompson suggest that either the viewer will continue to watch the program supplied through the recorder, but with no substantial delay, or that the viewer will have to manually turn off the recorder. There is absolutely no indication whatsoever in Thomason that after the delay time is eliminated, the device (in Thomason's case, the television) is automatically returned to normal mode, as is recited in Applicant's claim 1. This feature is also not shown or suggested by Whitby. Therefore, even in combination, Whitby and Thomason fail to disclose or suggest at least one limitation recited in Applicant's claim 1.

Examiner disagrees. Applicant defines "Normal mode" as a mode in which incoming audio inputs are applied directly to audio inputs of the radio. Assuming the term is interpreted in this manner, this is exactly what the combination switches to. When the system is caught up, it must begin live play back. If it did not, no playback would be produced and it would defeat the purpose of catching up to the live playback.

Applicant's first allegation as to claims 23 and 40 are not persuasive for the same reasons stated above.

Applicant further alleges:

"As discussed above, in "normal mode," incoming audio inputs are applied directly to the audio inputs of the radio. By contrast, in "replay mode," the audio input to the radio is received from the RAM and incoming audio is inhibited from the radio, but can be stored in the RAM to be played out after a time delay. Thus, when the device is in replay mode, it "recording as normal." "Normal mode" does not equate with "recording as normal" as appears to be suggested by the Examiner. Rather, normal mode and replay mode refer to the source of the audio input to the radio, whether or not the device is recording."

"Whitby similarly discloses that when the device is in playback mode, it continues to record. For example, see page 10, line 12 to page 11, line 18. In fact, were the device not recording when in playback mode, when the user has finished listening to the recorded portion there would be a break or period of lost data equal to the length of the playback. The notion that the device does not record when in playback mode is contrary to Whitby's disclosure on page 11, lines 7-18. Thus, because Whitby's device is "recording as normal" when in playback mode, it would be perfectly logical to have the device remain in playback mode when the station is changed on the radio."

"Whitby neither discloses automatic switching between replay and normal modes when the radio station is changed, nor is this feature inherent or "implicit" in Whitby. There is nothing in Whitby that discloses or suggests that if the device is in replay mode (i.e., is storing and delayed and playing out audio) that changing the radio station will cause the device to change into a different mode. The law is clear that the prior art must contain a definite teaching, suggestion or motivation that would lead one

of ordinary skill in the art to either combine to references or modify a reference (or combination of references). This required teaching, suggestion or motivation is completely lacking in the instant case. Although Whitby discloses that a user can tune the radio to change the station (page 5, lines 14-15 referenced by the Examiner), Whitby does not link the station change to a change in the mode of the device. Furthermore, this feature is not shown in Thomason or any other reference of record, whether taken alone or in combination with Whitby. In addition, as discussed above, causing the device to change mode when there is a station change is neither "obvious" nor "implicit," as stated by the Examiner because Whitby's device is "recording as normal" when in playback mode. Thus, there is absolutely no suggestion or motivation present in the prior art of record to modify Whitby (whether considered alone or in combination with Thomason) such that the "radio is automatically returned from replay mode to normal mode with incoming audio inputs applied to said radio when there is a station change on the radio," as is claimed in Applicant's claim 28. Therefore, for at least these reasons, Applicant's claim 28 is patentable over the art of record and withdrawal of the rejection of claim 28 is respectfully requested."

Examiner disagrees. As an initial manner, Applicant is construing the previous rejection in a manner not intended by the Examiner. The combination, after a change in channel will start live playback, not playback from a recording. Thus just like Applicant's claimed invention, the combination's "normal mode" will use the live audio broadcast as the input rather than the recorded as in the "replay mode". Furthermore, how can it be possible that the combination will not return to this live mode when the system clearly teaches that a station change is possible? Will the system just stop playing? Whitby may not come right out and say its returned to this mode, but it is extremely obvious if not implicit that this will occur. If it did not, what would be the purpose of the station change? Would a user just change the station and the system would stop? It is clear that a station change would merely change the station and put the system in the live playback mode. If it did not, it would render the device useless. Most, if not all, radio

playback devices do not stop playback from a station change. Changing the station will playing back a recorded file will put the system in the live playback mode.

Applicant's arguments regarding claims 6 and 7 are not persuasive for the same reasons stated above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 4, 8 – 18, 23, 28 – 30 and 36 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitby (U.K. Patent Application 2 258 102 A) in view of Thomason (U.S. Patent 6,018,612)

Regarding **Claims 1 and 23**, Whitby discloses:

A repeat circuit for use with an audio receive and reproduce device that has a normal mode and a replay mode (Fig. 2) including:
a RAM having an input connected to a receiving input and an output connected to a replay audio into of said audio receive and reproduce device (i.e. Fig. 2 element 32);

a control adapted to switch said audio receive and reproduce device into a replay mode by inhibiting application of income audio (i.e. a time shifted mode of operation in which the direct audio output is disabled; page 10)

and for instead applying at least a portion of audio inputs stored in said RAM as audio inputs to said device via the replay audio input of said device (i.e. instead the received signal stored in memory is played back; page 10);

the audio reproduced by said device being selectively delayed from incoming audio inputs by a time dependent on where in said RAM said control begins the applying of audio inputs to said device (i.e. and the received signal that is stored in memory in a digitized form is withdrawn from the memory after a period of delay, converted back to an analog signal and passed to the audio output, this gives the reproduction of the transmitted program with a time shift; page 10).

Whitby does not explicitly disclose:

wherein said device is configured to automatically control the rate at which said RAM is read out to said replay audio input of said device, said RAM being read out to said replay audio input of said device at a replay rate that is different than an incoming rate at which the incoming audio inputs are received to be stored in said RAM, or wherein said replay rate is selected so as to gradually eliminate the delay time without substantially impairing audio quality of the replayed audio, thereby automatically returning said device to normal mode.

Thomason discloses a means of accelerating the viewing of a historical program (including the audio) in which a user can catch up with the live broadcast by

accelerating the layback, the acceleration factor of a few percent is practically unnoticed by the viewer; col. 2 lines 15 - 30.

Applying this teaching to the Whitby receiver reads upon the limitations of:

wherein said device is configured to automatically control the rate at which said RAM is read out to said replay audio input of said device, said RAM being read out to said replay audio input of said device at a replay rate that is different than an incoming rate at which the incoming audio inputs are received to be stored in said RAM; and

wherein said replay rate is selected so as to gradually eliminate the delay time without substantially impairing audio quality of the replayed audio, thereby automatically returning said device to normal mode.

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of Thomason to the device disclosed by Whitby. One would have been motivated to do so in order to be able to start a program on the Whitby device well after it started, to maintain continuity after interruption, have the ability to replay, or playback in slow motion; see Thomason col. 1 lines 1 – 67 and col. 2 lines 1 – 51.

Regarding **Claims 36 and 37**, in addition to the elements stated regarding claims 1 and 28, the combination further discloses:

a manually operable input component, and wherein said control is operable in response to a selected input from said input component, to switch said audio receive

and reproduce device into replay mode (i.e. user operable means to allow the user to output a program as desired; page 3 lines 4 – 13 in Whitby).

Regarding **Claim 2**, in addition to the elements stated above regarding claim 36, the combination further discloses:

wherein the location in said RAM at which the applying of audio inputs begins, and thus the delay between incoming audio inputs and reproductions is controllable, in response to selective operation of said component (i.e. Whitby further discloses the user can jump backwards during the reproduction to adjust the time shift; page 11 lines 20 – 25)

Regarding **Claim 3**, in addition to the elements stated above regarding claim 2, the combination further discloses:

wherein said delay is a function of at least one of the number of times said component is operated and the time said component is operated (i.e. Whitby further discloses a user can give a pause command which causes the device to cease reproducing the program in real time and instead stores the signal in memory until the user gives a continue command and after this it reproduces the program with a time shift corresponding to the interval between the pause and continue commands; page 11 lines 8 – 15).

Regarding **Claim 4**, in addition to the elements stated above regarding claim 2, the combination further discloses:

Wherein when said device is receiving inputs from said RAM, the circuit is in replay mode, and including an output element providing a selected indication that said circuit is in said replay mode (i.e. Whitby discloses a mode in which the stored digitized program is withdrawn, converted to an analog signal and passed to the audio output (page 10 lines 13 – 20) (i.e. wherein when said device is receiving inputs from said RAM, the circuit is in replay mode), an alpha-numeric display device (fig. 2 element 28) (i.e. an output element) and the display showing the transmission; page 7 lines 1 – 7).

The combination fails to explicitly disclose said output element also providing an indication of said delay. However, it would have been obvious to one of ordinary skill in the art to provide an indication of delay. In the combination, the user may select to catch up with the live broadcast while playing a portion of the broadcast that had been recorded and is delayed by a given amount of time. Providing a user with an indication of how close the system was to reaching the live broadcast would be a desirable and obvious feature to add.

Regarding **Claim 8**, in addition to the elements stated above regarding claim 36, the combination further discloses:

wherein said RAM is a wrap-around memory, the oldest audio input therein being written over when a new audio input is received and said RAM is full (Whitby discloses

that if the memory has sufficient capacity to store 15 minutes and recording continues past that, the data would be overwritten; page 10 lines 24 – 25 and page 11 lines 1 – 4)

and wherein said control inhibits writing over audio inputs in said RAM in response to a selected input component, the circuit being in storage mode when this occurs (i.e. Whitby discloses if a user wants to record a particularly program the user may set it to not be recorded over by the next program; page 13 lines 10 – 17)

and wherein said control causes incoming audio inputs to be applied to said device when the circuit is in storage mode (i.e. and the audio signal from the tuner section can pass directly to the audio output; page 7 lines 17 – 18).

Regarding **Claim 9**, in addition to the elements stated above regarding claim 8, the combination further discloses:

wherein said control is operative when the circuit is in storage mode to cause at least selected portions of audio inputs stored in said RAM to be reproduced on said device in response to a selected input from said input component (i.e. Whitby discloses user operable means to allow the user to output a program as desired; page 3 lines 4 – 13; and instead the received signal stored in memory is played back; page 10 lines 14 – 17)

Regarding **Claim 10**, in addition to the elements stated above regarding claim 9, the combination further discloses:

wherein said selected input is said input component being manually operated for a selected time interval (i.e. Whitby further discloses user operable means to define at least one program to be stored or retained in memory; page 3 lines 4 – 8)

Regarding **Claim 11**, in addition to the elements stated above regarding claim 1, the combination further discloses:

wherein said device is a radio, and wherein said circuit is returned from replay mode to a normal mode with incoming audio inputs applied to said device when there is a station change on said radio (i.e. Whitby further discloses a user can command the microprocessor to tune to a desired station (page 5 lines 14 – 15) and the audio signal passes directly to the output and to the memory in digital form (page 7 lines 18 – 23). It is extremely obvious if not implicit that as the user changes the station the system will begin recording as normal. This maintains the purpose of the invention given on page 11 lines 24 – 25 in which a user can playback something just heard)

Regarding **Claim 12**, in addition to the elements stated above regarding claim 1, the combination further discloses:

wherein said control processes audio inputs applied to said RAM (i.e. Whitby discloses user operable means to give instructions to the microprocessor (page 3 lines 4 – 5) and the microprocessor is arrange to be operable to store a digitized audio signal; page 2 lines 22 – 23)

Regarding **Claim 13**, in addition to the elements stated above regarding claim 36, the combination further discloses:

wherein said component is operable to indicate a desired rate at which audio inputs are to be reproduced to said device (i.e. Thomason discloses a means of accelerating the viewing of a historical program (including the audio) in which a user can catch up with the live broadcast by accelerating the layback, the acceleration factor of a few percent is practically unnoticed by the viewer; col. 2 lines 15 – 30)

Also reading on the claim even more broadly, Whitby further discloses the sampling frequency could be 22 kHz, sampling on a scale defined by 8 data bits, but other sampling frequencies and scales of definition are within the scope of the invention (page 8 lines 8 – 12) and that the rate is adjustable as desired (page 21 lines 18 – 25)

Regarding **Claim 14**, in addition to the elements stated above regarding claim 13, the combination further discloses:

wherein said component is operable in at least two different ways, said component being operated in a selected way to indicate a desired rate (i.e. Thomason discloses a means of accelerating the viewing of a historical program (including the audio) in which a user can catch up with the live broadcast by accelerating the layback, the acceleration factor of a few percent is practically unnoticed by the viewer; col. 2 lines 15 – 30)

Also reading on the claim even more broadly, Whitby further discloses the user can alter the quality of digitization as desired (page 21 lines 18 – 25).

Regarding **Claim 15**, in addition to the elements stated above regarding claim 36, the combination further discloses:

wherein said control is operative in response to a selected input to set said circuit into an elimination mode, said control being operative when in elimination mode to store in said RAM a selected duration of audio inputs ahead of inputs received by said RAM, and is responsive, when in elimination mode, to a selected input from said component for skipping an audio duration in said RAM which is less than said selected duration, whereby audio during said audio duration is not reproduced at said device (i.e. a means of fast-accelerating over a historical program, in this case not all television picture data is processed, some may be skipped and not passed on for demultiplexing and decompression; Thomason; col. 2 lines 25 – 33).

Regarding **Claim 16**, in addition to the elements stated above regarding claim 15, the combination further discloses:

wherein said audio duration is variable in response to variations in the selected input form said component (i.e. a means of fast-accelerating over a historical program, in this case not all television picture data is processed, some may be skipped and not passed on for demultiplexing and decompression; Thomason; col. 2 lines 25 – 33).

Regarding **Claim 17**, in addition to the elements stated above regarding claim 15, the combination further discloses:

wherein said control is operative when in elimination mode to store said selected duration in said RAM before applying audio inputs from said RAM to said device (i.e. Whitby further discloses and the audio signal passes to the memory in digital form page 7 lines 18 – 23).

Regarding **Claim 18**, in addition to the elements stated above regarding claim 15, the combination further discloses:

wherein said control is operative, when in elimination mode to apply audio inputs to said device from said RAM (i.e. Whitby further the received signal that is stored in memory in a digitized form is withdrawn from the memory after a period of delay, converted back to an analog signal and passed to the audio output, this gives reproduction of the transmitted program with a time shift; page 10 lines 14 – 19)

said RAM being read out to apply inputs to said device at a slower rate than audio inputs are received to be stored in said RAM at any time RAM is not storing at least said selected duration of audio inputs (i.e. slow motion; Thomason; col. 2 lines 1 – 50)

Regarding **Claims 28 – 30**, all limitations in Claims 28 – 30 are met as stated above regarding claims 1 and 18 except for wherein said radio is automatically returned from replay mode to normal mode with incoming audio inputs applied to said radio when there is a station change on said radio

Whitby further discloses a user can command the microprocessor to tune to a desired station (page 5 lines 14 – 15) and the audio signal passes directly to the output and to the memory in digital form (page 7 lines 18 – 23). It is extremely obvious if not implicit that as the user changes the station the system will begin recording as normal. This maintains the purpose of the invention given on page 11 lines 24 – 25 in which a user can playback something just heard.

Regarding **Claim 38**, in addition to the elements stated above regarding claim 37, the combination further discloses:

wherein said control is operable in response to a rate indication from said input component for controlling the rate at which said RAM is read out to apply audio inputs (i.e. Thomason discloses a means of accelerating the viewing of a historical program (including the audio) in which a user can catch up with the live broadcast by accelerating the layback, the acceleration factor of a few percent is practically unnoticed by the viewer; col. 2 lines 15 – 30).

Regarding **Claim 39**, in addition to the elements sated above regarding claim 38, the combination further discloses:

wherein the rate at which said RAM is read out is different than an input rate at which said audio inputs are received to be stored (i.e. Thomason discloses a means of accelerating the viewing of a historical program (including the audio) in which a user can

catch up with the live broadcast by accelerating the layback, the acceleration factor of a few percent is practically unnoticed by the viewer; col. 2 lines 15 – 30).

Regarding **Claim 40**, all limitations in Claim 40 are met as stated above regarding claim 1.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitby (U.K. Patent Application 2 258 102 A) in view of Thomason (U.S. Patent 6,018,612) in further view of Oftedahl (U.S. Patent 6,449,768).

Regarding **Claim 6**, in addition to the elements stated above regarding claim 1, the combination further discloses:

wherein when said device is receiving inputs from said RAM, the circuit is in replay mode (i.e. Whitby discloses a mode in which the stored digitized program is withdrawn, converted to an analog signal and passed to the audio output; page 10 lines 13 – 20)

Whitby does not disclose a multicolor LED, the LED displaying one color for replay mode, and a second different color for normal mode with incoming audio inputs applied to the device.

Oftedahl discloses various LEDs to indicate the mode of operation (fig 2 elements 88, 90, 92 and 94).

Oftedahl does not disclose the exact mode of operation of the LED as claimed by applicant, however it would have been obvious to one of ordinary skill at the invention to use different or multicolored LEDs to indicate the mode of operation. One would have been motivated to do so to make the device more user friendly by showing the user the exact mode of operation they device was in.

Regarding **Claim 7**, in addition to the elements stated above regarding claim 6, the combination further discloses:

wherein said RAM is a wrap-around memory, the oldest audio input therein being written over when a new audio input is received and said RAM is full (i.e. Whitby discloses that if the memory has sufficient capacity to store 15 minutes and recording continues past that, the data would be overwritten; page 10 lines 24 – 25 and page 11 lines 1 – 4)

and wherein said control inhibits writing over audio inputs in said RAM in response to a selected input component, the circuit being in storage mode when this occurs (i.e. and if a user wants to record a particularly program the user may set it to not be recorded over by the next program; page 13 lines 10 – 17)

Whitby does not disclose said LED displays a third color when said circuit is in storage mode.

Oftedahl discloses various LEDs to indicate the mode of operation (fig 2 elements 88, 90, 92 and 94).

Oftedahl does not disclose the exact mode of operation of the LED as claimed by applicant, however it would have been obvious to one of ordinary skill at the invention to use different or multicolored LEDs to indicate the mode of operation. One would have been motivated to do so to make the device more user friendly by showing the user the exact mode of operation they device was in.

Allowable Subject Matter

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Flanders whose telephone number is (571) 272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7546. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



SINH TRAN
SUPERVISORY PATENT EXAMINER

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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